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Federal Communications Commission  
Office of Secretary**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
 Amendment of Section 73.202(b) )  
 Table of Allotments, ) MB Docket No. 05-10  
 FM Broadcast Stations )  
 (The Dalles, Tualatin, Eugene, Albany, )  
 Lebanon, Paisley, Diamond Lake, Oregon )  
 and Goldendale, Washington) )

To: Marlene H. Dortch, Secretary

Attn: Chief, Audio Division  
Media Bureau**RESPONSE OF CUMULUS LICENSING LLC TO  
REQUEST TO ISSUE ORDER TO SHOW CAUSE**

Cumulus Licensing LLC ("Cumulus"), licensee of Station KNRQ-FM, Eugene, Oregon ("KNRQ"), offers the following Response to the Request To Issue Order To Show Cause filed jointly in the above-captioned proceeding by Portland Broadcasting, LLC ("PBL"), Columbia Gorge Broadcasters, Inc. ("Columbia"), M.S.W. Communications, LLC ("MSW") and Extra Mile Media, Inc. ("Extra" and together with PBL, Columbia and MSW, the "Joint Parties"). The Request To Issue Order To Show Cause (the "Request") was filed by the Joint Parties on February 10, 2005. Both procedurally and substantively, the Request lacks merit and the relief sought should be rejected.

**The Request Is Procedurally Defective**

1. On March 21, 2005, the Joint Parties filed a pleading captioned as a Petition for Rule Making (the "Petition") that would, among a myriad of FM channel and community changes, force KNRQ to move from Channel 250C to Channel 300C. As noted in the

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Request, Cumulus filed Reply Comments in this proceeding on October 19, 2005. As described in detail in Cumulus' Reply Comments, the Joint Parties' Petition was converted through a levered process into a Counterproposal to another Counterproposal filed by SSR Communications Incorporated ("SSR") that was also conveniently filed on March 21, 2005. The SSR Counterproposal was styled as a counterproposal to an original filing by Klickitat Broadcasting ("Klickitat") to add Channel 266A to Monument, Oregon and docketed as MB Docket No. 05-10 (hereafter referred to as "Docket 05-10"). However, through a contrived interdependence created by the same-day filings of the Petition and the SSR Counterproposal and conveniently pointed out to the Commission by the Joint Parties in their Reply Comments filed on June 2, 2005 in Docket 05-10, the Commission elected to treat the Petition in the manner requested by the Joint Parties, that is, as a counterproposal in Docket No. 05-10. In a Public Notice issued on October 4, 2005 (Report No. 2727), the Commission established October 19, 2005 as the deadline by which interested parties could file Reply Comments to the Petition.

2. One issue raised by Cumulus in its Reply Comments is the feasibility of using Channel 300 as a replacement channel for KNRQ as well as the use of Channel 300C2 as a replacement channel for Station KYYT(FM), Goldendale, Washington. Cumulus noted the proximity of airports to the KNRQ and the KYYT transmitter sites, and the potential that the operation of Channel 300 at those locations would cause electromagnetic interference ("EMI") to navigation aids used at those airports. Cumulus' position relating to the use of Channel 300 was premised upon its own experience in the Shreveport, Louisiana market and on the analysis

and conclusions of Gary M. Allen, President of Aviation Systems, Inc.<sup>1</sup> The Joint Parties' Request notes that, contrary to Cumulus' expectation, the FAA has issued no hazard determinations on the use of Channel 300 at Eugene and Goldendale. Although the initial FAA determinations are not what Cumulus anticipated, they are not yet final and are being reviewed by Cumulus.

3. Moreover, as briefly reviewed below, Cumulus in its Reply Comments focused on more than the question of using Channel 300, and those issues, as well as the final resolution of the air hazard concern, remain. The Joint Parties have elected not to address the issues raised in the Cumulus Reply Comments for the past four months. While the Joint Parties lament the lack of a clear procedural rule that would permit them to address all of the Cumulus arguments, their premise that only the issuance of an Order to Show Cause directed to Cumulus will permit them to do so is sophistry and premature. Cumulus raised several germane and substantive objections to the merits of the Petition. Cumulus, and we assume the Commission, would be very interested in the Joint Parties' response to those objections.<sup>2</sup> A simple request by the Joint Parties to file Supplemental Comments would have sufficed without resorting to the premature show cause route. Indeed, the Joint Parties have elected to use this more straight forward method of reporting relevant facts on other occasions without any

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<sup>1</sup> Cumulus is extremely sensitive to the issue of potential EMI created to air navigation aids by broadcast stations as a result of its experience in being forced to take Station KQHN(FM), Channel 300C2, Oil City, Louisiana, off the air for almost one year as a result of an after-the-fact FAA determination that the station caused interference to navigation aids in the Shreveport area. The station has only recently resumed broadcasting on Channel 247C2.

<sup>2</sup> The lack of seemingly elemental procedural rules to address the Joint Parties' concern is a product of their design that their Petition be processed as a counterproposal to a counterproposal that fails to offer an opportunity for a fair evaluation of competing requests to all the channel changes requested in the Petition.

concern that no rule authorized such filings. For example, on July 12, 2005, the Joint Parties filed a Supplement in this proceeding to report a settlement reached with Haystack Broadcasting, Inc., and on April 18, 2005 filed an extensive Erratum to the Petition in order to correct all the errors generated by their quick filing of the Petition on March 21, 2005.

4. The action the Joint Parties urge the Commission to take in the Request is premature. Section 1.87(a) of the Commission's Rules provides, in part, that the Commission will only issue an order directing a licensee to modify its license after it has made a determination that such action is warranted. This requires an evaluation of the full record in this proceeding, not a piecemeal focus on only one aspect of it, in this case whether Channel 300 is available for use in Eugene, Oregon and Goldendale, Washington. And, that evaluation is one the Commission cannot undertake until, at the very least, it has addressed all the issues raised by Cumulus, and the Commission makes its public interest determination.

**Answers Are Required from the Joint Parties  
on the Following Substantive Issues**

5. As noted above, Cumulus raised several substantive issues in its Reply Comments in addition to the potential EMI to air navigation that could result from the assignment of Channel 300 to Eugene, Oregon and/or Goldendale, Washington. These issues are fully documented and argued in the Reply Comments, but will be briefly mentioned herein for reference.

6. KACI-FM Loss Areas. One aspect of the Petition would move Station KACI-FM from Channel 249C2 at The Dalles to Channel 250C2 at Tualatin, Oregon. Contrary to the Joint Parties bare assertion that this will create no white or gray areas, Cumulus documented the creation of white and gray areas, as well as even larger areas that will lose

their third, fourth and fifth over the air audio services. *See*, Cumulus Reply Comments, paras. 8 - 10, and the Engineering Statement of Jefferson Brock of Graham Brock, Inc. (the "Brock Statement"), Exhibit 5. As noted in the Brock Statement (Note 5), his analysis is premised on the move of Station KMCQ(FM), Channel 283C, The Dalles, Oregon, to Channel 283C3 at Covington, Washington, as ordered in MB Docket No. 02-136, a move for which KMCQ already holds a permit.

7. The KMSW Upgrade. In an effort to slip by an unrelated upgrade, the Petition incorporates a proposed modification to the licensed facilities of KMSW(FM), The Dalles, Oregon. The request is to upgrade KMSW from Channel 224C3 to Channel 272C2. As reflected in the Cumulus Reply Comments (para. 12), this request is not essential or interrelated to any of the other proposals. Rather, it simply appears to be an attempt to upgrade KMSW without the possibility of drawing competing proposals or applicants. Therefore, this planned upgrade must be severed from the Petition. However, if the Commission retains the proposed upgrade in the mix, Cumulus has noted its intention of applying for Channel 272C2 at The Dalles, participating in any auction for the channel and constructing the facility if it is the winning bidder. *See*, Cumulus Reply Comments, Declaration of Lewis W. Dickey, Jr.

8. The Move of KXPC-FM to Paisley, Oregon. One interesting aspect of the Petition is the transfer of Station KXPC-FM, which currently operates on Channel 279C licensed to Lebanon, Oregon to the shrinking community of Paisley, Oregon, which had a population of under 250 in 2000, a 30% loss from its 1990 Census count. On reflection, it is obvious that the only reason the Joint Parties are interested in moving KXPC-FM to the

proposed transmitter site at Paisley to create mutual exclusivity between the Petition and the SSR Counterproposal to allot Channel 280C to Monument, Oregon.<sup>3</sup> Presto, by the happenstance of two complex rule making filings made by supposedly independent parties on the same day, and each containing at least one otherwise unnecessary and unusual request created for the first time a conflict between the original Docket 05-10 proceeding and the Petition. However, this critical aspect of the Petition is suspect for the several reasons advanced by Cumulus in its Reply Comments, and runs counter to the loss of an established service to over 1,000,000 persons in the Lebanon, Oregon area occasioned by the departure of KXPC-FM from Lebanon, Oregon. *See*, Cumulus Reply Comments, paras. 13 - 16.

9. The Petition as a Counterproposal. As detailed by Cumulus in its Reply Comments (Paras. 4-6), the Joint Parties have reached this stage in the processing of their Petition through procedural alchemy that effectively deprives the public and the Commission of a fair and full assessment of the merits of their complex proposal.<sup>4</sup> In fact, no parties remain in Docket 05-10 who could be adversely affected by processing the Petition for what it really represents, a new petition for rule making, not a overly complex counterproposal to a counterproposal to an original rule making filing by a party that has withdrawn any interest in a new FM channel at Monument, Oregon. As noted above, the SSR Counterproposal is no

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<sup>3</sup> Even this tenuous connection between the SSR Counterproposal and the Joint Parties' Petition has now been removed, or at least potentially removed. On October 20, 2005, (one day after the deadline for filing Reply Comments to the Joint Parties' Petition) SSR and Two Hearts Communications, LLC filed a Joint Request for Approval of Settlement Agreement proposing, among other things, the allocation of Channel 280C1 at Monument, Oregon in lieu of the allocation of Channel 280C to that community. If this request is granted, the Petition and the SSR Counterproposal are no longer mutually exclusive.

<sup>4</sup> Indeed, the Petition could serve as the model prompting the issuance of the Commission's rule making proceeding in MB Docket No. 05-210 to dramatically revamp how changes in FM channels and cities are made and processed.

longer mutually exclusive with the relief requested in the Petition and Klickitat Broadcasting, which started the ball rolling with a modest request for a new Class A allocation at Monument, Oregon, has since withdrawn its expression of interest in the allocation.

10. The SSR Counterproposal Was Filed Late. Finally, of special note is the fact that the SSR Counterproposal, an essential element to the processing of the Petition, was itself filed late - a defect that has warranted dismissal of late filed counterproposals in other proceedings. As noted, the deadline for filing counterproposals in Docket 05-10 was March 21, 2005. While the SSR Counterproposal was stamped as received in the Media Bureau's Office (the Commission office to which it was directed) on March 21, 2005, it was not officially received in the Office of the Secretary until April 1, 2005. The Commission has very recently observed that in such circumstances, the counterproposal must be dismissed. *See, Report and Order in MB Docket No. 05-142, Roma, Texas* (DA 06-262; Feb. 10, 2006), at Par. 2. In the Roma decision, the Commission dismissed a counterproposal that was not received in the Office of the Secretary until two days after the deadline, even though it was stamped as received in the Media Bureau on the actual deadline.

### Conclusion

The request by the Joint Parties for the Commission to issue an order to show cause to Cumulus to move Station KNRQ-FM to Channel 300C should be summarily dismissed.

Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Ave., N.W., Suite 200  
Washington, D.C. 20036-3120  
(202) 728-0400  
February 23, 2006

Respectfully submitted,  
CUMULUS LICENSING LLC

By: 

Alan C. Campbell  
Nathaniel J. Hardy  
Its Attorneys

**Certificate of Service**

I, Tracy Lynn Trynock, hereby certify that on this 23rd day of February, 2006, true and correct copies of the foregoing **Response of Cumulus Licensing LLC to Request to Issue Order to Show Cause** have been served via U.S mail, postage prepaid, or by hand delivery upon the following persons:

  
Tracy Lynn Trynock

John A. Karousos, Assistant Chief\*  
Media Bureau  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Andrew Rhodes\*  
Media Bureau  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Lee J. Peltzman  
Aaron P. Shainis  
Shainis & Peltzman, Chartered  
1850 M Street, Suite 240  
Washington, DC 20036

Richard R. Zaragoza  
Bryan McGinnis  
Pillsbury Winthrop Shaw Pittman, LLP  
2300 N Street, NW  
Washington, DC 20037-1128

J. Dominic Monahan  
Luvaas Cobb Richards & Fraser, PC  
777 High Street, Suite 300  
Eugene, OR 97401

Matthew K. Wesolowski  
Chief Executive Officer  
SSR Communications Incorporated  
5270 West Jones Bridge Road  
Norcross, GA 30092-1628

Haystack Broadcasting, Inc.  
620 East Third Street  
The Dalles, OR 97058

\* Denotes Hand Delivery